

# MBE Contractor and Subcontractor Rights and Responsibilities



# *MBE Prime Contractor* **RIGHTS**

**MBE prime contractors have the same rights as all other prime contractors.**

- ▶ May request and receive information to help develop competitive bid or proposal through a Public Information Act (PIA) request
- ▶ Are entitled to receive fair and equal treatment during the procurement process
- ▶ May submit written questions to and receive a written response from State agency
  - ▶ May ask State agency how MBE goals and subgoals were set

# *MBE Prime Contractor* **RIGHTS** (continued)

- ▶ During contract term:
  - ▶ May ask to add MBEs, but not at the expense of originally-named MBEs
  - ▶ May ask to remove MBEs, but must demonstrate good cause
  - ▶ Any additions, removals or other changes to original MBE participation commitments must be approved in writing by the State agency
- ▶ For contracts awarded after June 9, 2014, an MBE prime contractor may self-perform up to 50% of the overall MBE contract goal and up to 100% of any one MBE contract subgoal, provided that the certified MBE prime contractor is properly identified on the MBE participation schedule and the firm is NAICS code-certified to do the work
  - ▶ Intended to help MBEs grow their capabilities and build capacity

# *MBE Prime Contractor* **RESPONSIBILITIES**

- ▶ Learn enough about the procurement process to compete effectively:
  - ▶ How does the process work?
  - ▶ Who are the decision makers?
  - ▶ What are they buying and when are they buying it?
  - ▶ Who is your competition?
  - ▶ What other information do you need to compete effectively?
- ▶ Raise any technical or MBE-related concerns with the procurement officer ***BEFORE*** the submission deadline

NOTE: As of May 13, 2013, all contracts with MBE subcontracting requirements include an MBE liquidated damages clause.

## *MBE Prime Contractor* **RESPONSIBILITIES** (continued)

- ▶ Make sure MBE commitments are clearly, completely and accurately state on the MBE forms
- ▶ Use named MBE subcontractors as promised
- ▶ Comply with monthly MBE reporting requirements and ensure that MBE subcontractors do so as well
- ▶ Meet all deliverables on time
- ▶ Keep good records to document your technical and MBE subcontracting performance

# *MBE Subcontractor* **RIGHTS**

- ▶ The prime contractor must:
  - ▶ Provide MBE subcontractors with enough time (10 days before the bid/proposal is due) and information to submit a qualified, competitive quote
  - ▶ Provide MBE subcontractors with no less than the same information and amount of time to respond as any other potential subcontractor
  - ▶ Obtain the MBEs authorization to list the MBE subcontractor on a bid or proposal
  - ▶ Notify the MBE subcontractor before execution of the contract on which the firm has been listed as an MBE subcontractor

# *MBE Subcontractor* **RIGHTS** (continued)

- ▶ MBE subcontractors are entitled to:
  - ▶ Receive prompt payment from the prime contractor for undisputed work completed successfully
  - ▶ Be treated fairly and without fear of harassment or intimidation
  - ▶ Contact the contract owner directly when appropriate (project manager, procurement officer, MBE Liaison)

**Maryland has a statute in place to protect MBEs against fraud. Notify the State if you have first-hand knowledge of fraudulent MBE-related activity.**

**Fraud Hotline: 410-767-3582**

# *MBE Subcontractor* **RESPONSIBILITIES**

- ▶ Carefully review all forms and agreements before signing
  - ▶ Understand what prime and State are expecting
  - ▶ Keep copies of all documents
  - ▶ Never sign a blank form presented by a prime contractor; all documents should be completed before you sign
  - ▶ Keep good records/documentation
- ▶ Complete and submit monthly MBE payment forms and other required State submissions on time
- ▶ Deliver the goods and/or services as promised
- ▶ Get advance written confirmation of requests for additional work



# *MBE Subcontractor* **RESPONSIBILITIES** (continued)



MDOT's Office of Minority Business Enterprise (OMBE)  
is the State's official certification agency.

- ▶ Renew MBE certification annually
- ▶ Notify OMBE of any changes in your business status
- ▶ Request additional NAICS codes when you add additional products or services
- ▶ Review your listing in the online MBE directory to ensure accuracy

# *What To Do* **If Things Go Wrong On The Job**

- ▶ Document the problem in writing with as much detail as possible
- ▶ Promptly notify all parties who are in a position to take action on your behalf, including the State agency's MBE Liaison
- ▶ Other resources:
  - ▶ GOMA
  - ▶ Commission on Civil Rights
  - ▶ MDOT Certification Unit
  - ▶ Fraud Hotline
  - ▶ Court System
  - ▶ Bonding Company
- ▶ Be reasonably patient, but escalate if necessary

# Resources

Code of Maryland Regulations (COMAR)

[www.dsd.state.md.us/comar](http://www.dsd.state.md.us/comar)

- ▶ MBE Program: Search 21.11.03
- ▶ SBR Program: Search 21.11.01.06

Governor's Office of Minority Affairs (410-767-8232)

[www.goma.maryland.gov](http://www.goma.maryland.gov)

- ▶ MBE Liaison's listing
- ▶ MBE & SBR reports
- ▶ Legislation and Policy

MDOT's Office of Minority Business Enterprise (410-865-1269)

[www.mdot.maryland.gov](http://www.mdot.maryland.gov) (Minority/Disadvantaged Business Enterprise)

- ▶ Certification/certification renewal
- ▶ NAICS code expansion of services
- ▶ MBE online directory listing